IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22..4..2008

Coram:

The Honourable Mr.Justice P.K. MISRA
and
The Honourable Mr.Justice K.CHANDRU

W. P. No. 45708 of 2002

S.N. Jayaraman ... Petitioner

-vs-

1. Secretary to Government
Department of Health and Family Planning
Fort St. George, Chennai - 9

2. The Director of Public Health and Preventive Medicine
Chennai - 6

3. The Filaria Officer
National Filaria Control Unit
Chengalpattu

4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai ... Respondents

Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the Tribunal relating to the order dated 24.6.2002 made in O.A. No. 3941 of 1992 and proceedings issued in Na. Ka.No.4276/86/A1 dated 18.12.89 by the 3rd respondent herein and the proceedings issued in Pa.Ma. No. 61405/O.Na/90/E3 dated 05.7.1991 by the second respondent and quash the same and direct the respondents to reinstate the petitioner into service with all backwages.

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For Petitioner : Mr. G. Thangavel
For Respondents 1-3 : Mrs. Geetha Thamaraiselvan, GA

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ORDER

K. CHANDRU, J.

Heard the arguments of Mr. G. Thangavel, learned counsel appearing for the petitioner and Mrs. Geetha Thamaraiselvan, learned Government Advocate representing the respondents 1 to 3 and have perused the records.

2. When this writ petition came up for admission on 30.12.2002, the same was dismissed in limine by stating that there were no grounds to interfere with the order dated 24.6.2002 passed by the Tribunal in O.A. No. 3941 of 1992. The matter was taken to the Supreme Court in Civil Appeal No. 811 of 2005. The Supreme Court allowed the Civil Appeal by judgment dated 31.01.2005 with the following direction:

> "That the Judgment and Order dated the 30th December 2002 of the High Court of Judicature at Madras in Writ Petition No. 45708 of 2002 be and is hereby set aside and the matter be and is hereby remanded to the aforesaid High Court with the direction that the said High Court DO restore to its file the Writ Petition No. 45708 of 2002 and do dispose of the same fresh in accordance with law."

Thereafter, notice was ordered on the writ petition and counter affidavit was filed on behalf of the respondents on 22.6.2007.

3. The Tribunal, by its judgment dated 24.6.2002 in O.A. No. 3941 of 1992, while upholding the order of dismissal, directed that the order can take effect only from 18.12.1989 and, therefore, the petitioner was entitled to get salary for the period from 19.01.1987 to 18.12.1989. It also held that for the period from 01.5.1984 to 28.01.1987, as that period was covered by Medical Certificates, he should be made eligible for any kind of Medical Leave or other leave and he should be paid salary for the said period. But it was held that there was no necessity to pay the petitioner any salary for the period from 29.6.1983 to 30.4.1984. It is against the denial of the relief of reinstatement, the petitioner has filed the present writ petition.

4. The State Government (respondents 1 to 3) filed a writ petition being W.P. No. 36465 of 2004 challenging that portion of the order granting various reliefs in the form of backwages and this Court, by a judgment dated 10.12.2004, dismissed the writ petition on the ground that the respondents 1 to 3 were guilty of delay and laches in approaching this Court. Therefore, that portion of the order had become final in so far as the parties herein are concerned.

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5. It is seen from the records that the petitioner was appointed as Head Mazdoor by the third respondent on 25.5.1974 on contingency basis and he was paid on the basis of market rate fixed by the District Collector. The petitioner did not have any kind of leave and if he absconded himself from duty, then his services were deemed to be terminated. The petitioner absconded from duty w.e.f. 29.6.1983 and the claim of the petitioner that he was on treatment due to illness cannot be accepted. In fact, the Tribunal, by its order, held that the period from 29.6.1983 to 30.4.1984 was unauthorised and punishment of dismissal can be sustained. But we are at a loss to note as to how once the punishment of dismissal is held to be valid, then the petitioner cannot be granted backwages for the subsequent period. However, since the writ petition filed by the State was dismissed, we are not going into the said issue.

6. The respondents have categorically stated that the contention of the petitioner that the statement that the petitioner was having brain fever from 01.7.1983 to 31.8.1984 cannot be accepted. When the petitioner filed a writ petition being W.P. No. 8934 of 1988, a learned single Judge of this Court, by an order dated 12.10.1988, directed the official respondents to consider his representation. Thereafter, a charge-memo dated 15.9.1989 was issued to him and it was informed that the petitioner was only a contingent mazdoor and not eligible for any kind of leave except Casual Leave. The petitioner had not given proper reply and, therefore, he was reminded by a letter dated 04.11.1989 to submit his reply. Once again, another reminder letter dated 27.11.1989 was issued. An oral enquiry was fixed on 02.12.1989 and since on the day of the enquiry, viz., on 02.12.1989, he did not appear for enquiry, an ex parte enquiry was conducted. On the basis of the said enquiry, it was found that the charges levelled against him were proved and he was dismissed from service by an order dated 18.12.1989. The petitioner preferred an appeal dated 30.12.1989 to the second respondent Director of Public Health and by an order dated 05.7.1991, the appeal was also dismissed. It is against this order, he went to the Tribunal which rejected his claim for setting aside the dismissal.

7. Mr. G. Thangavel, learned counsel appearing for the petitioner, submitted that though the charges levelled against the petitioner were held to be proved, the punishment of dismissal was disproportionate. He also relied upon the decision of the Supreme Court in Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and others [2004 (4) SCC 560] and pleaded that this Court can interfere with the punishment which is grossly disproportionate.

8. The above said case relied on by the learned counsel for the petitioner can be distinguished on the ground that the absence therein was only for a period of around two months and the absence

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was justified by proper medical Certificate produced by him.

9. It must be noted that subsequently, the Supreme Court, in a recent decision relating to L&T Komatsu Ltd. v. N. Udayakumar,(2008) 1 SCC 224, after referring to several previous decisions of the Supreme Court, held that the absence without leave is a serious indiscipline and that even Labour Court vested with power under Section 11-A of the Industrial Disputes Act, 1947 to interfere with quantum of punishment, cannot use that discretion in a matter relating to unauthorised absence. The following passages found in paragraphs 8 and 9 of the said judgment will make the position clear.

Para 8: "So far as the question whether habitual absenteeism means the gross violation of discipline, it is relevant to take note of what was stated by this Court in Burn & Co. Ltd. v. Workmen: (AIR p. 530, para 5)

> "5. … There should have been an application for leave but Roy thought that he could claim, as a matter of right, leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the Company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with his services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension."

Para 9: In LIC of India v. R. Dhandapani2, it was held as follows:

> "It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words

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'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd. v. A. Unnikrishnan."

10. In the present case, the Tribunal has found that the petitioner was unauthorisedly absent for over ten months without any leave to his credit and also justified his dismissal. The petitioner was only an employee paid out of contingencies working in a temporary establishment. Therefore, in the limited judicial review that is conferred on this Court under Article 226, we are not inclined to interfere with the order passed by the Tribunal justifying the dismissal made against the petitioner. In fact, thanks to the inordinate delay in the State filing a cross writ petition, the petitioner has got certain amounts by way of payment for the period covered by his Medical Certificate. The petitioner will have to be rest contented with the said windfall.

11. In view of the above, the writ petition is devoid of merits and accordingly, will stand dismissed. However, there will be no order as to costs.

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To
1. Secretary to Government
Department of Health and Family Planning
Fort St. George
Chennai - 9

2. The Director of Public Health and Preventive Medicine
Chennai - 6

3. The Filaria Officer
National Filaria Control Unit
Chengalpattu

+1 cc To Mr. G. Thangavel, Advocate, SR.23010
1 cc To The Government Pleader, SR.23410

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